Unifirst Corporation *and* General Truckdrivers, Office, Food & Warehouse Union Local 952, International Brotherhood of Teamsters, AFL–CIO. Case 31–CA–22164

August 27, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On July 23, 1998, Administrative Law Judge Michael D. Stevenson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified and set forth in full below.[2]

We agree with the judge that the Respondent violated Section 8(a)(1) of the Act by coercively interrogating employees and by telling employees that it would not renegotiate upcoming union contracts and that strikes are inevitable if they vote in the Union. In addition, for the reasons that follow, we also adopt the judge's findings that the Respondent further violated Section 8(a)(1) of the Act by informing employees that a strike would result in job loss and that it would not abide by the Union's rules if they vote in the Union.

The judge found that during a union campaign at the Respondent's Ontario, California facility in June-July 1998, the Respondent's former president, Tony DiFillippo, acted as its agent in presenting to employees the Respondent's opposition to unionization. DiFillippo and Peter Kraft, the Respondent's labor relations counsel, conducted several meetings with employees at which various aspects of the collective-bargaining process were discussed, including DiFillippo's views respecting the negative consequences of selecting the Union. Based on the testimony of several witnesses, as set out in relevant part below, the judge found that at a meeting on July 23, 1998, DiFillippo indicated to employees that if they chose the Union, he would not abide by the Union's rules, that he would cause a strike, and that he would bring in other workers to continue operations. The judge found that DiFillippo's statements violated Section 8(a)(1) by conveying the inevitability of a strike and the futility of bringing in a union, and, additionally, that these remarks contained an unlawful threat of job loss. We agree. When DiFillippo told employees that if they voted for union representation, he would disregard applicable rules, cause a strike rather than bargain in good faith, and bring in new workers once the strike had been precipitated, unit employees could form a reasonable apprehension that their jobs would be in danger. Therefore, as explained below, DiFillippo's remarks ran afoul of *Eagle Comtronics*, 263 NLRB 515 (1983).

The judge based his findings on the testimony of Respondent witness Kraft and General Counsel witnesses Jeffrey Leal and Mark Leuthold. Leal, who at the time of the hearing was a unit employee, testified that DiFillippo told employees that "he would not abide by the union rules, [and] that he would [cause a] strike and bring in other employees from other locations to run the facility." When asked, "Did [DiFillippo] indicate whether a strike would have any sort of effect on you [i.e., as Ontario facility employees]?" Leal responded that DiFillippo had indicated that "[i]t'd be a burden on the company if the union came in. . . . We'd lose our—probably, lose our jobs, I believe. I don't know the wording of how he put it, but that's the meaning that I got out of certain terms of the whole meeting that . . . if the union came in there, or if we brought a union in, we would lose our jobs."

Leuthold, a former unit employee, testified that DiFillippo stated that "if the union were voted in . . . that any time there were contracts between the . . . employees and the employer, that at any given time, as he put it, we would have our God given right to strike, which he didn't have a problem with, but he also explained that the company could then utilize their right to replace us." Kraft testified, in relevant part, that:

> Mr. DiFillippo said . . . in his past dealings with the union, the company had had some strikes as a result of negotiations and that, when that had happened, the company had always exercised its prerogative to run—to operate. . . . I explained that if [the employees] went on strike the company had a right to hire permanent replacements, that, in the case of an economic strike, the

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We find it unnecessary to pass on the issue of whether George Meyers possessed supervisory authority during periods not relevant to the violations alleged in this case.

[2] We shall modify par. 1(a) of the judge's recommended Order and his notice to employees to more accurately reflect the violations that he found. We shall also include a provision in the Order to reflect our recent decision in *Ferguson Electric Co.,* 335 NLRB 142 (2001).

> replacement had first claim to the job, so that even if the strike ended, the replacement would stay or remain employed. . . . Mr. DiFillippo confirmed that that had happened at the other locations and . . . I believe he indicated that it had happened at the other locations and from that, implied that it *would* happen again, yes. [Emphasis added.]

Section 8(c) of the Act permits an employer to make predications about the consequences of union representation, provided its remarks are not accompanied by a threat of reprisal or force or promise of benefit. In *Eagle Comtronics*, the Board considered the extent of an employer's obligation, on informing employees that they may be permanently replaced in an economic strike, to provide an accurate picture of employee rights under *Laidlaw*.[3] The Board stated that:

> [A]n employer does *not* violate the Act by truthfully informing employees that they are subject to permanent replacement in the event of an economic strike. . . . Unless the statement may be fairly understood as a threat of reprisal against employees or is explicitly coupled with such threats, it is protected by Section 8(c) of the Act. . . . [A]n employer may address the subject of striker replacement without fully detailing the protections enumerated in *Laidlaw*, so long as it does not threaten that, as a result of a strike, employees will be deprived of their rights in a manner inconsistent with those detailed in *Laidlaw*.[4]

Thus, under *Eagle Comtronics*, an employer may, for example, lawfully inform employees that they "could" be permanently replaced, without telling them that they would retain employment rights. *Quirk Tire*, 330 NLRB 917, 926 (2000), enfd. in part 241 F.3d 41 (1st Cir. 2001).

This is not such a case, however. DiFillippo informed employees, not that they could be replaced if there were an economic strike, and that there *would* be a strike, as the Respondent would cause it. As an initial matter, DiFillippo's strike scenario suggests not an economic strike as contemplated by *Eagle Comtronics*, but an unfair labor practice strike brought on by the Respondent's bad-faith bargaining.

Further, *Eagle Comtronics* by its own terms applies to statements that are unaccompanied by threats.[5] The decision articulates the Board's policy of resolving in the employer's favor any ambiguity occasioned by a failure to articulate employees' continued employment rights when informing them about permanent replacement in the context of an economic strike. Where, however, ambiguous comments about striker replacement are part and parcel of a threat of retaliation for choosing union representation, as they were here, any ambiguity should be resolved against the employer. *L.S.F. Transportation, Inc*., 330 NLRB 1054, 1066 (2000) (employer's statement that employees could bring the Union in, but when they went on strike he would bring in temporary or replacement workers to replace them, is an unlawful threat of job loss; employer's statement could reasonably be interpreted "to mean that Respondent would not be averse to, and indeed might encourage, a strike so that it could hire replacements and discharge the striking employees").[6]

In sum, *Eagle Comtronics* is not intended to protect employer speech that, like DiFillippo's remarks, places permanent replacement in the context of an intent to precipitate a strike as "payback" for choosing representation. In these circumstances, Jeffrey Leal's interpretation of the import of DiFillippo's comments was eminently reasonable. Where an employer states that if employees choose a union, the employer is going to cause a strike and replace those employees, employees could reasonably infer that if he votes for the union, he puts his job in jeopardy. Thus, we find that DiFillippo's striker replacement remarks, viewed in the context of his statement that a vote for union representation would be met by a strike engineered by the Respondent, was a veiled threat of job loss in violation of Section 8(a)(1).

For these reasons, we disagree with our dissenting colleague that DiFillippo's remarks concerning striker replacements are protected as employer free speech. As discussed above, an employer may lawfully inform employees that it can permanently replace them in the event of an economic strike, or that it has permanently replaced employees during economic strikes in the past. DiFillippo, however, did not limit himself to discussing the possible consequences of an economic strike. He went further. He informed Leal that, if the employees chose the Union, the Respondent would cause a strike and

[3] *Laidlaw Corp*., 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (7th Cir. 1969), cert. denied 397 U.S. 920 (1970) (economic strikers who unconditionally apply for reinstatement when their positions are filled by permanent replacements retain their status as employees and are entitled to reinstatement, absent substantial legitimate business justification).

[4] 263 NLRB at 515–516.

[5] Id. at 516 (emphasis in original).

[6] Thus, this case is distinguishable from cases such as *Quirk Tire*, supra, where the Board dismissed allegations that an employer violated Sec. 8(a)(1) by stating, inter alia, that it could hire permanent replacements during an economic strike. There, the judge found that the comments were not made in the context of other threats.

bring in employees from other facilities. The dissent has conceded that DiFillippo's comment about the inevitability of a strike violated Section 8(a)(1) of the Act. Any strike caused by an employer's bad-faith bargaining in retaliation for a union election victory is not an economic strike; therefore, *Eagle Comtronics* does not apply to DiFillippo's statement. Thus, the dissent's reasoning that the General Counsel failed to show that DiFillippo's remarks strayed outside the zone of protected speech misses the mark.[7]

We also disagree with our dissenting colleague's characterization of DeFillippo's remarks that he would not abide by union rules as "hopelessly ambiguous." The complaint alleged, in relevant part, that the Respondent by this statement unlawfully informed employees that it "would never sign a collective bargaining agreement with the Union, thereby signaling the futility of supporting the Union." The judge credited Leal's testimony that, during the meeting on July 23, DeFillippo made the statement. The next day, July 24, Leal sent a letter to the Union's representative summarizing DiFillippo's remarks at that meeting. We find that, in the context of DiFillippo's campaign speech, the term "Union rules" was a shorthand reference to a collective-bargaining agreement. Our colleague's attempt to characterize the phrase as referring to the Union's constitution or bylaws ignores the context of the remarks. Therefore, we conclude that employees would reasonably have interpreted the Respondent's message to mean that the Respondent either would refuse to reach an agreement with the Union or, if it did, would not abide by the terms set forth in any such contract. The likely effect of such a statement would be to indicate to employees that they need not bother to select a union, because the Respondent did not view itself as bound to lawfully deal with a collective-bargaining representative. This conduct, in our view, clearly had the tendency to interfere with, restrain, or coerce employees in the exercise of their Section 7 right to engage in collective bargaining for mutual aid and protection. For these reasons, we agree with the judge that the Respondent unlawfully threatened employees with the futility of bargaining.[8]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Unifirst Corporation, Ontario, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that it would not renegotiate upcoming union contracts at its union facilities.

(b) Telling employees that it would not abide by the Union's rules if they select a union.

(c) Telling employees that strikes and job loss are inevitable if they select a union.

(d) Coercively interrogating employees about why they want a union and what the Union could do that the Company could not do.

(e) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(b) Within 14 days after service by the Region, post at its facility in Ontario, California, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent had gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 13, 1996.

(c) Within 21 days after the service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at-

[7] We note that Peter Kraft's remarks concerning striker replacement were neither alleged nor found to be unlawful.

[8] See *Airport Express*, 239 NLRB 543, 548 (1978); *D & H Mfg. Co.*, 239 NLRB 404–405 (1978).

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

testing to the steps that the Respondent has taken to comply.

CHAIRMAN HURTGEN, dissenting in part.

Contrary to my colleagues, I find the Respondent did not unlawfully threaten to never sign a union contract and did not unlawfully indicate that it would be futile to bring in the Union. The judge found that Tony DiFillippo, the Respondent's agent, told employee Jeffrey Leal that the Respondent would not abide by the Union rules. The day after the meeting, Leal wrote a letter to Union Representative Kelly, reporting DiFillippo's remarks.

The relevant complaint allegation is that DiFillippo said "Respondent would never sign a collective bargaining agreement with the Union, thereby signaling the futility of [the employees'] supporting the Union." The incident is discussed in the judge's decision under the heading, "DiFillippo's threat never to sign a union contract." However, Leal's testimony was only that DiFillippo said, "he would not abide by union rules." Further, Leal admitted that he was not sure of the exact words DiFillippo had used and that DiFillippo did not explain what he meant.

The statement is hopelessly ambiguous. Union rules (e.g., constitution and bylaws) do not ordinarily set forth *employer* obligations to employees. In any event, there is no showing that the union rules herein set forth any such obligation. Thus, it is a long stretch to find that the Respondent was saying that it would not sign a contract or that bargaining with a union would be futile. My colleagues find that the term "union rules," as used by DiFillippo, was a shorthand reference for a collective-bargaining agreement. Although this is a conceivable interpretation of Leal's murky testimony, it is far from an inevitable one. In sum, I find that the General Counsel has failed to show by a preponderance of the evidence that DiFillippo told Leal that the Respondent would never sign a collective-bargaining agreement with the Union, thereby signaling to employees that supporting the Union would be futile.

I also disagree with my colleagues' affirmation of the judge's finding that DiFillippo unlawfully threatened employees by telling them that job loss was inevitable if they selected the Union.[1] The judge based his finding on the testimony of the Respondent witnesses Kraft and the General Counsel witnesses Leal and Mark Leuthold. Leal, who was at the time of the hearing a unit employee, testified that DiFillippo told employees that "he would [cause a] strike and bring in other employees from other locations to run the facility." When asked, "Did [DiFillippo] indicate whether a strike would have any sort of effect on you [i.e., as Ontario facility employees]?" Leal responded that DiFillippo had indicated that "[i]t'd be a burden on the company if the union came in. . . . We'd lose our—probably, lose our jobs, I believe. I don't know the wording of how he put it, but that's the meaning that I got out of certain terms of the whole meeting that . . . if the union came in there, or if we [] brought a union in, we would lose our jobs."

Leuthold, a former unit employee, testified that DiFillippo stated that "if the union were voted in . . . that any time there were contracts between the . . . employees and the employer, that at any given time, as he put it, we would have our God given right to strike, which he didn't have a problem with, but he also explained that the company could then utilize their right to replace us." Kraft testified, in relevant part, that:

> Mr. DiFillippo said . . . in his past dealings with the union, the company had had some strikes as a result of negotiations and that, when that had happened, the company had always exercised its prerogative to run – to operate. . . . I explained that if [the employees] went on strike the company had a right to hire permanent replacements, that, in the case of an economic strike, the replacement had first claim to the job, so that even if the strike ended, the replacement would stay or remain employed. . . . Mr. DiFillippo confirmed that that had happened at the other locations and . . . I believe he indicated that it had happened at the other locations and from that, implied that it *would* happen again, yes. [Emphasis added.]

Based on the credited testimony, it is clear that DiFillippo extrapolated (from the Respondent's experience with strikes at other plants) that if employees voted for the Union, strikes *would* occur at the Ontario facility and that the Respondent would exercise its right to hire replacements. As noted above, I agree with the judge that the Respondent unlawfully conveyed the inevitability of a strike. In my view, however, the General Counsel has failed to show that DiFillippo's and Kraft's remarks, as they pertain to the replacement of economic strikers, strayed outside the zone of protected employer speech. In this regard, I note that Kraft specifically addressed the issue of permanent replacements as it related to an employer's rights when there is an economic strike. In *Eagle Comtronics*,[2] the Board considered the issue of an employer's obligation when informing employees that

[1] I agree that DiFillippo unlawfully conveyed the inevitability of a strike in the event of a union victory, but I do so only because of the judge's finding that DiFillippo implied to employees that because strikers occurred at other (unionized) facilities of the Respondent, they would occur at the instant facility.

[2] *Eagle Comtronics*, 263 NLRB 515 (1982).

they may be permanently replaced in an economic strike. The Board stated that:

> [A]n employer does not violate the Act by truthfully informing employees that they are subject to permanent replacement in the event of an economic strike. . . . Unless the statement may be fairly understood as a threat of reprisal against employees or is explicitly coupled with such threats, it is protected by Section 8(c) of the Act. . . . [A]n employer may address the subject of striker replacement without fully detailing the protections enumerated in *Laidlaw*,[3] so long as it does not threaten that, as a result of a strike, employees will be deprived of their rights in a manner inconsistent with those detailed in *Laidlaw*.[4]

In this case, the Respondent truthfully informed employees that it had the right to continue operations in the event of a strike by using replacement workers, and that it had replaced strikers at other facilities. In my view, DiFillippo's and Kraft's comments neither state nor imply that striking employees who are replaced lose all employment rights. Although DiFillippo did state that he would replace employees in the event of a strike, Kraft explicitly tied the possibility of permanent replacement to an economic strike.

Leal's testimony that he felt that DiFillippo was conveying that employees would lose their jobs if they chose the Union does not establish that the Respondent's remarks were unlawful. The test is an objective one, not a subjective one. Leal acknowledged, in essence, that he could not recall or put into words anything that DiFillippo specifically said that gave him such a feeling. Without some showing that the words were unlawful, the General Counsel's proof fails in this regard.

My colleagues note my agreement that DiFillippo unlawfully implied to employees that because strikes occurred at other (unionized) facilities of the Respondent they would occur at the instant facility. Contrary to my colleagues, however, it does not follow that the Respondent was threatening to bargain in bad faith. Further, even if it was, it is not necessarily the case that such a strike, were it to occur, would be caused by the Respondent's bad-faith bargaining.

In my view, then, DiFillippo's and Kraft's remarks, as reflected in the record, would not reasonably be interpreted as threatening that a strike at the Ontario facility would result in the loss of employees' *Laidlaw* rights.

Accordingly, I would dismiss this allegation.

[3] *Laidlaw Corp.*, 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (7th Cir. 1969), cert. denied 397 U.S. 920 (1969) (economic strikers who unconditionally apply for reinstatement when their positions are filled by permanent replacements retain their status as employees and are entitled to reinstatement, absent substantial legitimate business justification).

[4] Id. at 516.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT tell you that we will not renegotiate upcoming union contracts at our union facilities.

WE WILL NOT tell you that we will not abide by the Union's rules if you select a union.

WE WILL NOT tell you that strikes and job loss are inevitable if you select a union.

WE WILL NOT coercively interrogate you by asking why you want a union and what the Union could do that the Company could not do.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

UNIFIRST CORPORATION

Ann White, Atty., for the General Counsel.

Lawrence C. Winger, Atty. (Kraft & Winger), of Portland, Maine, for the Respondent.

Frank W. Micucci, Atty., of Orange, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL D. STEVENSON, Administrative Law Judge. This case was tried before me at Los Angeles, California, on February 9 and 10, 1998,[1] pursuant to a complaint and amendment to complaint (GC Exh. 1f) issued by the Regional Director for the National Labor Relations Board for Region 31 on October 25 and November 21, respectively, and which is based on a charge filed by General Truck Drivers, Office, Food & Warehouse Union, Local 952, International Brotherhood of

[1] All dates herein refer to 1996 unless otherwise indicated.

Teamsters, AFL–CIO (Union) July 3. The complaint alleges that Unifirst Corporation, Inc. (Respondent) has engaged in certain violations of Section 8(a)(1) of the National Labor Relations Act, as amended (the Act).

Issues

I. Whether Respondent, acting through its supervisor and agent, Sixto Castillo, threatened an employee with job loss for supporting the Union.

II. Whether Respondent, acting through its agent and labor consultant, Tony DiFillippo, on one occasion told an employee that Respondent would not negotiate with the Union to renew existing collective-bargaining agreements at its union-represented facilities, thereby signaling the futility of supporting the Union at the Ontario facility; and whether, on another occasion, DiFillippo made one or more unlawful statements to Respondent's employees:

(a) That Respondent would never sign a collective-bargaining agreement with the Union, thereby again signaling futility of employees supporting the Union;

(b) Implied to employees that if the Union won the upcoming election, a strike was inevitable;

(c) Threatened employees with job loss in the event of a strike;

(d) Interrogated employees concerning their union sympathies; and

(e) Threatened to eliminate shuttle driver positions if the Union won the upcoming election.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. A brief, which has been carefully considered, was filed on behalf of Respondent. In lieu of a brief, General Counsel made a closing argument and cited legal authorities in support of her position.[2]

Upon the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

Respondent's business

Respondent admits that it is a Massachusetts corporation which operates a business renting, cleaning, and distributing linens and other items to and for other business entities with a principal place of business in Ontario, California. Respondent further admits that during the past calendar year, in the course and conduct of its business at its Ontario, California facility, that it purchased and received goods valued in excess of $50,000 directly from suppliers located outside the State of California. Accordingly, it admits, and I find, that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[2] Both General Counsel and Respondent filed extensive motions to correct transcript. Without objection, Respondent's motion is granted. As to General Counsel's motion, I grant that motion as well, with the modifications noted by Respondent in its letter to me of March 11, 1998.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that General Truck Drivers, Office, Food & Warehouse Union, Local 952, International Brotherhood of Teamsters, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

1. Statement of case

On June 6, two representatives of the Union, Frank Micucci, a General Counsel witness, and Kelly, who did not testify, served a written demand for recognition and bargaining on Respondent for an approximate 10-person unit, consisting of drivers and 3 maintenance employees. While no recognition was granted, a Board-supervised election was eventually held on August 16. The Union lost this election by a single vote. The union organizing campaign, which led to the election, engendered the unfair labor practice allegations which are the subject of this case.

2. Background

According to Attorney Winger, a second union campaign followed the first. Apparently, a second election was scheduled for January 1998, but at some point the Union withdrew its petition and the second election was never held.

Evidence was also introduced about still a third union organizing campaign occurring in January, February, and March. While it is not clear if the same union was involved then as is involved in the instant case, it is clear that a different unit of employees was involved, i.e., a unit of plant production workers at Ontario, California. Nor is it clear how this campaign was resolved, by election or by withdrawal of petition or by some other method. What is clear is that Respondent prevailed. Two other factors arose out of that campaign which relate to the present case. First, the General Counsel witness and alleged discriminatee, George Meyers, was on management's side, campaigning hard for Respondent's interests. (This was so even though he was not a member of the proposed bargaining unit.) Subsequently, as a result of that campaign, Respondent's management, including Respondent witness and General Manager Ruben Estrada, determined that whatever level of support the Union had in the production workers' campaign was based in part on bargaining unit employees' perception that there had been too much supervision on the floor, resulting in no direct line of communication between employees and management. Estrada's belief meant that Meyer's promised promotion as a second plant supervisor did not occur. Instead, Estrada effectively maintained the status quo which meant there was a plant manager, Felipe Rosales, and one plant supervisor, the same arrangement which allegedly had led to plant employees' perception of too much supervision in the first place.

When Estrada told Meyers that he would not be a plant supervisor, Meyers had just returned from 2 weeks' training in how to be a plant supervisor at a Respondent facility in Buffalo, New York. By all accounts, Meyers had performed well in Buffalo. The change in his future as announced by Estrada in March was a factor which turned Meyers against Respondent and its managers.

3. George Meyers

Before he was hired by Respondent, on or about July 26, 1995, as a shuttle driver, Meyers had worked as a general manager of a van line company in San Diego. While there, he became acquainted with Estrada who had a business relationship with Meyers' then employer.

When Meyers lost his job, he sought assistance from Estrada, who referred him to the then Plant Manager Larry Leal, who hired Meyers. Meyers' career at Respondent, until he was fired on or about July 29,[3] consisted of a roller-coaster-like series of highs and lows. Regrettably, I did not find him to be, on the whole, a credible witness. From time to time, he was impeached by the testimony he gave in an "R" case proceeding which arose out of this union organizing campaign. Other portions of his testimony seem implausible or remain uncorroborated. Moreover, Meyers' demeanor at hearing required both General Counsel and me to admonish him to behave in a proper way.

In any event, once Meyers was hired Respondent was experiencing a period of rapid growth. The main plant at Ontario opened in late 1994. Estrada took over as general manager in March 1995 and ultimately came to supervise about 130 employees in various departments: production, service, sales, office administration, and transportation. Within 2 years Respondent had acquired five or six other facilities in the southern California area, including Huntington Beach, San Diego, Riverside, San Fernando, Norwalk, and Las Vegas. The Riverside, Huntington Beach and San Diego facilities were union facilities when acquired by Respondent and one or more of their collective-bargaining agreements was due to expire in the summer of 1998.

In late 1995 and early 1996, Meyers was the only Respondent employee to possess a California commercial driver's license and a Department of Transportation (DOT) certification which allowed him to give job applicants a road test and evaluate their skills. Sometime before he left for Buffalo, Respondent delegated to Meyers the hiring function and he hired approximately three shuttle drivers after having placed a classified ad in the local newspaper, with Estrada's approval. In addition, there is evidence in the record that he evaluated at least two employees (R. Exhs. 2, 3) and that he conducted various training activities of those employees he hired. In deciding Meyers' supervisory status below, I will return to the above facts and more.

Once Meyers' promised plant supervisory position fell through, a series of other unfortunate events began to befall him. Of course, some were of his own making. In no particular order, I note that when new Plant Production Manager Rosales was hired in late spring he changed Meyers' work schedule and those of other shuttle drivers in a way which Meyers did not like. In addition, in May, Meyers missed a day of work and was disciplined because he called the office manager rather than his supervisor to say he wouldn't be in. Meyers felt this was unfair. In March or April, Meyers was removed by Estrada from a position as chair of the plant safety committee on the grounds that his superiors felt he was giving employees direction on safety issues contrary to Respondent's policies. Meyers felt this, too, was unfair. Before he was eventually fired for insubordination, Meyers elected to contact the Union and attempted to organize a transportation/maintenance unit of Respondent's employees.

Meyers arranged a meeting with union representatives in early June. He received a number of union authorization cards, had a majority of bargaining unit employees sign them, and returned them to the Union within 1 to 2 days. As noted above, this resulted in a union demand for bargaining on June 6.

B. Analysis and Conclusions

1. Meyers' supervisor status

In the matter of Teamsters, 31–RC–7397, Respondent litigated Meyers' supervisory status. The entire transcript of that hearing, dated June 19, is in the record of this case. (GC Exh.. 5.) On July 18, a Decision and Direction of Election issued (GC Exh. H. 2) finding, inter alia, Meyers was not a supervisor. On July 31, the Employer filed a request for review (GC Exh.. 3), and on October 28, 1997, the request for review was denied by Board Order. (GC Exh. 4.)

At hearing, General Counsel took the position that Respondent was not entitled in this 8(a)(1) unfair labor practice proceeding to relitigate the question of Meyers' supervisory status. Over General Counsel's objection, I permitted Respondent to do just that and I now affirm my decision here. The Board permits relitigation of the supervisory issue unless the second case is a related case, and by "related case" is meant where the second case is a refusal-to-bargain 8(a)(5) case. Because the instant case is not such a related case, relitigation was permissible. See *Serv-U-Stores*, 234 NLRB 1143 (1978); *Adco Electric*, 307 NLRB 1113, 1119–1120 (1992), enfd. 6 F.3d 1110 (5th Cir. 1993); and *Rock Hill Telephone Co. v. NLRB*, 605 F.2d 139, 142–143 (4th Cir. 1979).

After allowing Respondent to relitigate this issue, I now agree with the hearing officer in the "R" case, and find that for all times material to this case, Meyers was not a statutory supervisor.

Section 2(11) of the Act provides that:

> [T]he term supervisor means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The burden of proving supervisory status rests upon the party alleging that such status exists. *California Beverage Co.*, 283 NLRB 328 (1987). "Only individuals who with 'genuine management prerogatives' should be considered supervisors, as opposed to 'straw bosses, leadmen . . . and other minor supervisory employees.' An individual who exercises some 'supervisory authority' only in a routine, clerical or perfunctory manner will not be found to be a supervisor. The Board has a duty not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights

[3] Meyers' termination resulted in an unfair labor practice charge which the National Labor Relations Board investigated and found to be without merit.

that are protected under the Act." *Azusa Ranch Market*, 321 NLRB 811, 812 (1996).

The Board has long held that the criteria enumerated in Section 2(11) are to be read in the disjunctive; if an individual possesses a single attribute listed in that section, that individual is a supervisor. *Florence Printing Co*., 145 NLRB 141, 144 (1963). However, the exercise of otherwise supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not confer supervisory status on an employee. *J.C. Brock Corp.*, 314 NLRB 157, 158 (1994). The exercise of authority which derives from a worker's status as a skilled craftsman does not confer supervisory status because that authority is not the type contemplated by Section 2(11). *Adco Electric, Inc*., supra, 307 NLRB at 1120. Finally, the secondary indicia of supervisory status are in themselves not controlling. *Consolidated Services,* 321 NLRB 845, 846 fn. 7 (1996). See also *Meaden Screw Products Co.,* 325 NLRB 762, 768 (1998).

In *Beverly Enterprises v. NLRB*, 136 F.3d 353, 358 (4th Cir. 1998), the court stated:

> Every organization–from empire to stamp club–has, or unwittingly winds up with, a pecking order. Only at the very lowest tier of a business can one find a person who does not occasionally direct some other person to do something. Lest the chiefs far outnumber the Indians, Congress crafted Sec. 2(11)'s enigmatic standard, intending to exempt true management from the Act while still protecting the Sec. 7 rights of "straw bosses, leadmen, and set-up men, and other minor supervisory employees." *NLRB v. Bell Aerospace Co*., 416 U.S. 267, 280–281 (1974) (quoting Sen. Rep. No. 105, 89th Cong., 1st Sess. 4 (1947).
>
> If any authority over someone else, no matter how insignificant or infrequent, made an employee a supervisor, our industrial composite would be predominantly supervisory. Every order-giver is not a supervisor. Even the traffic director tells the president of a company where to park his car. *NLRB v. Security Guard Service*, 384 F.2d 143, 151 (5th Cir. 1967).

Applying these principles of law to the instant case, I find as follows: First, that Larry Leal, the plant manager, was fired on or about April 1 and that his replacement, Rosales, was hired about 6 weeks later. During this interregnum, Meyers may have hired, or effectively recommended to be hired, two or three shuttle drivers. (See GC, concession, Tr. 516). However, under the unusual facts and circumstances of this case, whatever Meyers did was not sufficient to prove supervisory status. *J.R.R. Realty Co*., 273 NLRB 1523 (1985). In *MDI Commercial Services*, 325 NLRB 53, 59 (1997), the judge wrote, "an employee does not acquire supervisor's status by reason of temporarily taking over the duties of an absent supervisor." (Citations omitted) See also *Quality Chemical,* 324 NLRB 328, 330 (1997), So far as any hiring Meyers may have done before Leal was fired, it was irregular and minimal rather than regular and substantial. *Hexacomb Corp.*, 313 NLRB 983, 984 (1994). Moreover, at the time of whatever hiring he did, Meyers' authority derived from his status as a skilled craftsman, that is, the only employee at Respondent to possess the requisite commercial California driver's license and DOT certification necessary to road test and hire the employees in question.

I note that Meyers' performance of two routine evaluations is not sufficient to prove supervisory status. *Quadrex Environmental Co.*, 308 NLRB 101 (1992). With respect to evidence that Meyers told an employee who had exceeded his continuous hours of work limit set by DOT to go home, I find that the statement is nothing more than the enforcement of safety rules and procedures in a routine manner and lacking the exercise of any independent discretion. *Quality Chemical,* 324 NLRB 328, supra.

Even if Respondent met its burden to prove that Meyers was a supervisor for a brief period, I find upon his return from Buffalo, that Meyers was not a supervisor and never became one prior to his termination. See *Edy's Grand Ice Cream,* 323 NLRB 683, 692 (1997)

All agree that at some point, about 3 months after he was hired, Meyers was promoted to leadman in the transportation department, and his salary was increased from $11.25/hour to $13/hour. I note that Respondent's supervisors were making $15 or more per hour. During his entire time at Respondent, Meyers dressed in the uniform of an employee and not that of a supervisor. When company agents came to Ontario to address employees, Meyers was considered to be an employee in the bargaining unit. Estrada conceded in his testimony that Respondent's budget did not allow for transportation supervisors such as Meyers was supposed to be. Nor was there any official position description save what Meyers himself wrote on March 4, at Estrada's request. (R. Exh. 4.)

In light of the above, even if Respondent had a good-faith belief that Meyers was a supervisor, such belief would not be a defense to a chart like that contained in this case. *Orr Iron, Inc*., 207 NLRB 863 (1973), enfd. 508 F.2d 1305 (7th Cir. 1975).

2. Castillo's alleged coercive statement to Meyers

Though I have found Meyers to be an employee as of June, the allegation I consider here is based solely on Meyers' testimony which is countered by Castillo. However, I cannot credit Meyers under the circumstances and will recommend dismissal.[4]

According to Meyers, shortly after beginning his shift, about 4 p.m. on Thursday, June 6, he drove his truck from Ontario to Riverside to drop off and pick up product. While there, Sixto Castillo, Respondent's district service manager and statutory supervisor who works out of Ontario but has no direct supervisory authority over Meyers, drove up to Meyers' truck in a company van. Then Castillo allegedly apologized to Meyers for being so rough on him a few days before. (Supposedly, this was a reference to a meeting which Castillo and Meyers both attended a few days before, where Meyers was disciplined for not calling in to a supervisor when he did not come to work.) Then Castillo allegedly changed the conversation to the Union, saying that Respondent had 6000 employees who could be flown in overnight to do Meyers' job, an implied threat of loss of

[4] Compare *NLRB v. Joy Recovery Technology*, 134 F.3d 1307, 1313 (7th Cir. 1998), where the respondent contended that its coercive questioning of an employee was lawful because she was a supervisor. Rejecting this contention, the Board found the violation and the court enforced the Board's Order.

employment for Meyers' union activities. Castillo testified that he spoke to Meyers on June 5, his normal day to travel to Riverside, and not June 6, his normal day to travel to San Fernando. Castillo also denied use of a company van, testifying he uses his personal vehicle in his travels on company business. According to Castillo, he greeted Meyers and asked him how everything was going. Meyers referred to a letter he had recently written to corporate headquarters complaining about various work-related subjects. (This letter was in Respondent's possession, but never offered into evidence.) Then, according to Castillo, Meyers said he had gone to the Teamsters, and made a reference to the prior campaign to organize the production employees, saying this Union [Teamsters] plays "hard ball." Then Meyers asked what Castillo would do "if me and my boys don't come to work on Monday?" Castillo allegedly expressed a hope that that would not happen, but allowed as how if it did, the transports had to keep running and Respondent had 6000 employees who, if necessary, could be flown in to run shifts.

The General Counsel contends that the conversation as described by Meyers happened on June 6 as a direct result of the Union's demand, which was served that afternoon, sometime before Meyers began his shift. How the awareness of the Union's organizing campaign would have necessarily led to Meyers, who battled against the Union in the prior campaign, is not explained.

In not crediting Meyers, I note that he claims to have made a prompt complaint of the threat to a manager of the Riverside facility named Charlie Bracino, who did not testify. Meyers also claimed to have made some notes of the conversation with Castillo, but these were never produced. If the conversation occurred on June 5 (Wednesday) as described by Castillo, the union nexus is missing. Because it is most unlikely that Castillo would have varied his routine to go to Riverside on Thursday, rather than San Femando, I find the conversation occurred on June 5 and was as described by Castillo. In crediting Castillo here over Meyers, I was particularly impressed with his denial of having apologized to Meyers for having disciplined him a few days before. Castillo did not impress me as a person who would tender such an apology—under any circumstances.

3. DiFillippo's alleged coercive statements

a. Introduction and applicable legal authority

Respondent produced its labor counsel, Peter Kraft, and former president and admitted agent and supervisor, Tony DiFillippo, to counter the remaining allegations. DiFillippo retired in 1995 and performs periodic duties, as needed, as a labor consultant for Respondent. In this case, he was assigned by Respondent's CEO to travel on two separate occasions, June 13 and July 23, from Massachusetts to Ontario and to "win" the union campaign for Respondent. In his testimony, Kraft portrayed himself as playing a secondary role to DiFillippo - in fact, Kraft is not charged with making any unlawful statements. Kraft also suggested he played the role of watchdog to DiFillippo, ensuring that the latter did not stray from the lawful. Before addressing the specific allegations, I note a few preliminary matters.

The general test applied to determine whether employer statements violate Section 8(a)(1) of the Act is 'whether the employer engaged in conduct which reasonably tends to interfere with, restrain, or coerce employees in the free exercise of rights under the Act. *NLRB v. Almet, Inc.*, 987 F.2d 445, 450 (7th Cir. 1993); *Williamhouse of California, Inc*., 317 NLRB 699, 713 (1995). In assessing whether Respondent's statements violate the Act, I take into account, "the economic dependence of the employees on their employers, and the necessary tendency of the former . . . . to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear. *NLRB v. Gissel Packing Co*., 395 U.S. 575, 617 (1969).

An employer is certainly free during an election campaign to tell employees how negotiations work and to point out to them that an Employer does not have to agree to the Union's proposals. *Histacount Corp*., 278 NLRB 681, 689–690 (1986). It is also permissible for an employer to tell employees about delays in negotiations which may be caused by the employer's assertion of its legal rights. Id. The Board has also upheld the right of an employer to inform employees that benefits could be lost through the give and take of negotiations. *BI-LO*, 303 NLRB 749 (1991), enfd. 985 F.2d 123 (4th Cir. 1992). Statements about the negotiation process and the possible loss of benefits become unlawful when they suggest that the employer will adopt a punitively intransigent bargaining strategy in response to a union victory. *Histacount Corp*., supra; *Coach & Equipment Sales Corp*., 228 NLRB 440, 441 (1977). More specifically, under Sec. (c) of the Act, an employer may oppose unionization of its work force by expressing any views, argument, or opinion in any media form, so long as such expression contains no threat of reprisal, or force, or promise of benefit. *Gissel Packing Co*., supra, 395 U.S. at 618. *Kinney Drugs, Inc. v. NLRB*, 74 F. 3d 1419, 1428 (2d Cir. 1996.)

In *Gissel Packing Co*., the Court also stated (id. at 620):

> An Employer can easily make his views known without engaging in "brinksmanship" when it becomes all too easy to "overstep and tumble over the brink." (Citation omitted.) At least he can avoid coercive speech simply by avoiding overstatements he had reason to believe will mislead his employers.

Quoted by the Board in *Reeves Bros., Inc*., 320 NLRB 1082, 1083 (1996).

In conclusion, I note that both Attorney Kraft and DiFillippo admitted in their testimony that in a meeting with employees on July 23, DiFillippo asked employees to give him another year without the Union as the Union could come back in if things weren't better. Such a statement could be held to violate the Act on the grounds that it constitutes an implied promise of benefits. *Reno Hilton*, 319 NLRB 1154, 1156 (1995); (*St. Francis) Nurses v. NLRB*, 729 F.2d 844, 852 (D.C. Cir. 1984). However, I make no finding on this point since the allegation was not charged and I cannot find it was fully litigated. General Counsel made no motion to amend the complaint nor did she urge in her closing argument that I find the violation. Despite this apparent inadvertence which was shared by Kraft on July 23 when he failed to correct DiFillippo on the spot, I refer to it because it is strong evidence of Respondent's "brinksmanship" and I will consider it in reviewing the pending allegations.

b. DiFillippo/Meyers conversation

On June 13, Kraft and DiFillipo attended a meeting at the Ontario facility conference room with Meyers and another shuttle driver named Ariano, who did not testify. Here again, there were discussions about the problems in the plant with DiFillippo asking what could be done about the problems in the plant. At the conclusions of the meeting, Meyers and DiFillippo (without Kraft) walked around the plant for a few minutes, with the former pointing out certain work-related problems. Then, according to Meyers, DiFillippo stated he would not renegotiate upcoming union contracts at Respondent's newly acquired facilities at Riverside, San Diego, and Huntington Beach. DiFillippo admitted walking around the plant with Meyers, but denied making the statement attributed to him.

This time I credit Meyers because he is corroborated by another General Counsel witness and former Respondent employee Mark Leuthold. Leuthold, who worked for Respondent about 15 months before resigning in August 1997 to accept other employment, testified that he was one of three shuttle drivers to attend a meeting on July 23 at the same place as before. Besides Kraft, DiFillippo, and Leuthold, two other drivers, Hoyle and Ariano, attended. (Meyers was not present.) According to Leuthold, DiFillippo stated that when those existing contracts became due (referring to Respondent's newly acquired unionized operations) that the Company simply would not negotiate the contracts. (Tr. p. 285.) It is most unlikely that two witnesses independently of each other would misinterpret the remarks of DiFillippo in the same way.

Contrary to Respondent's, brief, page 21, I find that the statement made to Meyers was not lawful and violated Section 8(a)(1) of the Act for it signaled the futility of supporting the Union. That is, DiFillippo was impliedly stating that he would treat any union which employees brought in the same way. *NLRB v. Sky Wolf Sales*, 470 F.2d 827, 830–331 (9th Cir. 1972). See also *Fieldcrest Cannon, Inc*., 318 NLRB 470, at 512 (1995). *Laidlaw Transit, Inc*., 315 NLRB 79, 84 (1994). In conclusion, even if I could accept Respondent's interpretation of DiFillippo's remarks, I would still find a violation because Respondent was responsible for its agent, DiFillippo, creating an ambiguity in what he proposed to do in the future and Respondent must bear the burden of that ambiguity. *Laidlaw Transit, Inc*., 315 NLRB 79, 84 (1994).

c. DiFillippo's threat never to sign a union contract

In this regard, General Counsel presented a witness named Jeffrey Leal, a current Respondent driver and brother of the fired plant manager Larry Leal. J. Leal testified that DiFillippo told him on July 23 that Respondent would not bring in the Union for 10 employees[5] and that Respondent would not abide by the union rules. These remarks were allegedly made on July 23 at a meeting at Respondent which included a janitor named Jay Sandifer, who did not testify. The day after the meeting J. Leal wrote a letter to Kelly, the union representative, reporting DiFillippo's remarks. (GC Exh. 8.)[6]

DiFillippo denied making the statement attributed to him. However, based on Leal's enhanced credibility as a current employee, *Flexsteel Industries,* 316 NLRB 745 (1995), his prompt, consistent report to Kelly, and the context of this case, I find Respondent again violated the Act by indicating it would be futile to bring in the Union. See *NLRB v. Naum Bros. Inc*., 637 F.2d 589, 592 (6th Cir. 1981).

d. DiFillippo's statement that a strike was inevitable and that employees would lose jobs as a result

In discussing the evidence here, I begin with Attorney Kraft who testified first that DiFillippo had told employees on July 23 that there had been strikes in the past at Respondent's facilities and that during the strikes, the Respondent had exercised its option to continue its business. (Tr. 372–373.) So far so good, but then Kraft also explained that DiFillippo implied to employees that because strikes happened at other [Respondent] locations [with unions] strikes would happen again. (Tr. 374) General Counsel witness Leal testified that at the meeting on July 23 DiFillippo said he would strike or cause a strike and bring in other Respondent employees to continue production. I credit Leal as corroborated by Kraft and do not credit DiFillippo's testimony that he never made those statements. Thus, I find again Respondent violated Section 8(a)(1) of the Act by conveying the futility of bringing the Union in, the end result of which was an inevitable strike. *Matheson Fast Freight*, 297 NLRB 63, 67 (1989).

I also find an 8(a)(1) violation because in the context of the evidence quoted above, the inevitable strike described by DiFillippo would lead to permanent job replacements who would take the strikers' job. In this regard, I credit Leuthold's testimony regarding DiFillippo's statement that the Company could replace striking employees. (Tr. 286.)

In *Eagle Comtronics*, 263 NLRB 515 (1982), the Board distinguished between truthful, although incomplete, statements regarding an employer's right to replace economic strikers and statements that go "beyond informing employees of the risk of being permanently replaced by telling them they would permanently lose their jobs." In *Larson Tool & Stamping Co.*, 296 NLRB 895 (1989), the Board made it clear that employers cannot tell employees without explanation that they would lose their jobs as a consequence of a strike or permanent replacement. Accord: *Baddour, Inc.,* 303 NLRB 275 (1991). DiFillippo stated or implied, without further explanation, that the Respondent did not have to hire back striking workers and this statement clearly conveyed to employees that they could lose their jobs if they went on strike. *Gibson Greetings*, 310 NLRB 1286, 1287 (1993), enfd. as modified 53 F.3d 385 (D.C. Cir. 1995).

[5] Consider this from DiFillippo to Respondent's employees: with a unit of only 10 employees, unlike General Motors, a company can operate during a strike. (Tr. 501), and this from Kraft to Respondent employees: a union with only 10 employees would not be a particularly strong union, (at least as compared to a union with a unit of 10,000 employees. (Tr. 394).

I make no finding on whether DiFillippo said he wouldn't bring in the Union for only 10 employees as it is not alleged as a violation. However, surely on this record, I could find that such a statement was made.

[6] While the letter was co-signed by Sandifer, I give little weight to that fact because he did not testify.

e. DiFillippo 's coercive investigation of Leuthold

With respect to the July 23 meeting with employee Hoyle, Ariano, and Leuthold, Leuthold testified that both Kraft and DiFillippo said they were there to find out why employees wanted the Union and what the Union could do that the Company could not do. To this the employees responded that the Union could get them better pay and benefits. DiFillippo countered by saying the Company was competitive in the industry, had a good plan to offer, but were losing money. On cross-examination, Leuthold added that DiFillippo had merely asked a rhetorical question for the purpose of getting the issues out on the floor so he could talk about them.[7]

Notwithstanding Leuthold's characterization of DiFillippo's question as a rhetorical exercise to get the issues on the floor, I find that under *Rossmore House*, 269 NLRB 1176, 1178 fn. 20 (1984), Respondent violated the Act. That is, DiFillippo was holding a captive audience employee meeting with Respondent's labor counsel in attendance. By phrasing the question as he did, DiFillippo was able to uncover the probable union supporters among the three employees and the basis for that support. Even though the conversation may have occurred in a friendly atmosphere, this constitutes no defense. *PPG Industries*, 251 NLRB 1146, 1155 (1980).

In conclusion, I note the case of *NLRB v. Thomas Products*, 432 F.2d 1217, 1218 (6th Cir. 1970), where the court enforced a Board order containing many of the same violations found herein.

[7] To add further context, I note that DiFillippo, either on his own or in response to an employee's question, added that mergers were possible in the future between Ontario and other southern California facilities, with a likely reduction in jobs, and that this could happen if the Union came in or even if the Union did not come in.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has failed to prove that during any time material to this case George Meyers was a supervisor.

4. Respondent violated Section 8(a)(1) of the Act through its supervisor and agent, DiFillippo, by telling employees that he would not renegotiate upcoming union contracts, that he could not abide by the Union's rules, that strikes were inevitable, and that employees could lose jobs if the Union came in, and by asking employees why they wanted the Union and what the Union could do that the Company could not do.

5. The above-unfair labor practices have the affect of burdening commerce within the meaning of Section 2(6) and (7) of the Act.

6. Except as specified herein, the Respondent has not engaged in any other unlawful conduct.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

[Recommended Order omitted from publication.]